SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUL 8 1968
JOHN F. DAVIS, CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1968

No. 274

JOSEPH I. MOREALI,

Petitioner,

vs.

WORKMEN'S COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, LOWELL FOODS, INC. and STATE COMPENSATION INSURANCE FUND,

Respondents.

PETITION FOR A WRIT OF CERTIORARI to the Supreme Court of the State of California

ARTHUR L. JOHNSON,
481 N. 1st Street,
San Jose, California 95112,

Attorney for Petitioner, and, as amicus curiae, "America's Unofficial and Uncompensated Ombudsman" (as such, de facto, for 58 years and recognized as such by California's Governor's office, Speaker's office and the press), "Lincoln's Chief Aide" in the nation (by virtue of parenthood of the idea), "Candle Lighter" and "Champion of Justice and Scientific and Economical Government With a Heart".

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Joseph I. Moreali, a destitute admittedly industrially injured workman, born in San Jose, California, on December 1, 1923, and still a citizen resident thereof, able to afford the printing of only a skeleton petition herein through the charity of his attorney (who had to borrow $350.00 on his BankAmericard

for the $100.00 filing fee herein and $250.00 for printing the Petition), on behalf of himself and 7,000,000 other California workmen, with their 8,000,000 dependents, or a total of 15,000,000 human souls, deprived of their constitutional rights by the decision herein complained of, prays, in this group or class test case, that a writ of certiorari be issued to review the final decision of the Supreme Court of the State of California, refusing to hear or consider their plea for justice.

THE CASE IN PROPER PERSPECTIVE

This case, heralded by the Official Reports of California Compensation Cases (C.C.C., April, 1968, Vol. 33, No. 4, Pages 203-205), edited by Warren L. Hanna, veteran publisher and author of Hanna on Workmen's Compensation, as a class test case "in which a proper foundation has been laid for an appeal as high as the United States Supreme Court," complies with all legal formalities for such an appeal and had all federal questions involved raised at the initial hearing of the case at the Referee level.

The case is unique in the history of American jurisprudence in that:

1. It is the only case in the land reaching high court levels in which a decision on factual issues was made WITHOUT ANY FACTS WHATSOEVER AS A BASIS and from "OUT OF THIS WORLD" evidence which the Referee who approved it characterized as "ESOTERIC SOLELY" and the insur-

ance carrier's doctor who made it openly admitted under oath in court, as well as in his 5-times characterized written "decision" itself, that the man's proved and adjudicated industrial injury was non-industrial in the eyes of God as based on "ASSUMED OMNIPOTENCE" on his part SOLELY, "WITHOUT ANY CONSIDERATION WHATSOEVER" to the laws of man written into a constitutional amendment by the people Abraham Lincoln stated we are a government "of, by and for," enacted by our State Legislature in implemented form and construed by our State Supreme Court in a unanimous decision written by its Chief Justice 33 years ago.

2. It was automatically rubber stamped as coming from God, and thus binding on 15,000,000 human souls He rules in California, by the Referee for the respondent Board, the Board itself, the State Appellate Court and the State Supreme Court. (Out of the great respect we have for our higher courts in California, we must state that they doubtless were misled by the respondent Board's attorneys, who in their ANSWER in the court proceedings pulled a foul punch by injecting secret evidence which the Referee and Board admittedly did not consider, as proved conclusively by their use of the term "SOLELY," in describing the evidence on which they acted, as "ESOTERIC".)

3. It is the only case in the history of America which will be taken from our nation's highest official court, if it also serves only a rubber stamp function in our democracy, to the COURT OF LAST RESORT—the people themselves—or, in the alternative,

to those people as the supreme example of American justice as embodied in the noble words engraved in enduring marble on the stately edifice in which our respected Supreme Court—the bulwark of democracy in America—is housed, of "EQUAL JUSTICE UNDER LAW."

The first two points of uniqueness are self-explanatory. The third requires further elucidation to be understandable, and believable. Here it is.

On the first of the year, as I conclude my half century of private and public service as an Ombudsmanic attorney, I am turning the private law practice I have built up in the last quarter century in my home town of San Jose, California, from which 16 of among the most prominent attorneys in town have graduated and two remain, over to the two of my three sons who are already admitted to the bar, and start my seventh nation-wide tour as America's now officially recognized unofficial and uncompensated Ombudsman I have been *de facto* for 58 years, in order to show "increased devotion to the great unfinished task remaining before us" (hidden from the American people for 105 years) of making "of, by and for" democracy work *PROPERLY*, so that it "shall not perish from the earth."

That democracy does not function properly when a partisan doctor, for personal gain, blasphemously puts on the cloak of God and writes what he terms a "decision" officially ruled binding on 15,000,000 people in the nation's most populous State by that State's two highest courts that topples its vaunted workmen's

compensation system, in first place for the past half century since it excelled Wisconsin's in the eyes of the textbook writers, to the very bottom place of fiftieth, since no other State in the Union could possibly have such an unsound, confused, unworkable and emasculated system of workmen's compensation as the decision here in question has reduced California's to by abolishing the basic rule of every workmen's compensation law in the country that "industry takes the workman as it finds him and that any 'lighting up' of a pre-existing condition in a body is fully compensable and subject to full medical treatment to restore to pre-injury status, with no pro-rating of temporary disability and/or medical treatment," which has been the law in California for 33 years since the respected and honored Chief Justice Waste and his six colleagues so declared it in *Tanenbaum v. Industrial Accident Commission,* 4 Cal.2d 615, 617 (1935), which decision is binding on this honorable court under the doctrine enunciated in *Supreme Lodge, Knights of Pythias v. Meyer,* 265 U.S. 30, 32, 33, 68 L. Ed. 885, 887, 888, 44 S. Ct. 432 (1924), as follows:

> "Under the settled rule of this court, declared so frequently and uniformly as to have become axiomatic, we must accept this decision of the highest court of the state, fixing the meaning of state legislation, as though such meaning had been specificaly expressed therein."

Entitling the 15,000,000 people for whom I speak as their Ombudsman to win their case before this

Honorable Court regardless of what reasoning actuated our State Supreme Court to use the dreaded words *"Hearing denied"* that condemned hundreds of thousands if not millions of people to darkness as they spend the most productive years of their lives paying off dishonored medical bills (the innocent victim of the malfunctioning system's fury in the instant case being still billed $148.50 by the doctor who posed as God and wrote the decision (sanctified by a referee, three board members and ten of our highest State jurists) herein complained of in the illuminated light of his "assumed omnipotence," six years after the industrial injury incapacitated the industrially injured worker and the 6,000,000 workers in the off-the-job disability program picked up the tab for $2,072.00 in hospitalizations and the California Physicians Service (Blue Shield) paid the $1,005.00 in surgery bills under group insurance the man was fortunate enough to have to avoid a two years' stretch at the debtor's grindstone or a six months' stretch on the taxpayers' charity rolls, with his family, to help *CREATE* poverty in California), and standing out in bold relief as a lighthouse of safety for California's teeming millions, is the landmark decision of this Honorable Court in the California based case of *Richfield Oil Corporation v. State Board of Equalization,* 329 U.S. 69, 84, 67 S. Ct. 908, 89 L. Ed. 1209 (1946), which phrases the winning words thusly:

> "That construction, *being a matter of state law,* is binding on us. But it is *not* determinative of the question whether the tax deprives the tax-

payer of a FEDERAL right. That issue turns not on characterization which the state has given the tax, *but on its operation and effect.*" See *St. Louis S.W.R. Co. v. Arkansas,* 235 U.S. 350, 362, 59 L.Ed. 265, 271, 35 S.Ct. 99, *Kansas City, Ft. S. & M.R. Co. v. Botkin,* 240 U.S. 227, 231, 60 L.Ed. 617, 618, 36 S.Ct. 261. (Emphasis added.)

We thus project the binding effect of United States Supreme Court wisdom one point further, so as to permit this high court to overrule California's highest court's, in effect, repudiation of its basic polar star doctrine of *Tanenbaum* (whether intended or by misdirection due to the "below the belt" evidence the State attorneys sneaked in on us, we have no way of telling, since our only guide to the truth in this regard is the fatal two words of our highest State Court of "Hearing denied," which doomed 15,000,000 people to reliance on mortgaged homes, furniture and/or cars and/or on charity and/or government Aid to Needy Disabled, and Aid to Needy Children and/or government medical treatment for from fifty to one hundred per cent of their employer-paid-for workmen's compensation insurance the decision here in question has deprived them of, depending on the degree of "esotericism" of the insurance carriers' doctors who are to write the decisions for the referees, board and the courts for automatic approval, without regard to the facts, if the decision is to be allowed to remain law and the precedent or guiding star of all future referees and board members.

Cannot the honorable justices of this high court see the crystal clear malfunctioning of democracy that is inherent in such a situation?

Or take the situation as to juvenile justice in America this Honorable and Honored Court tried so hard to remedy in the Gault decision of last year, without reaching its *main* defect, namely, a step-parent as *parens patriae* or *in loco parentis* instead of a real parent so as to ensure automatic built-in or in-built justice in the operation of the entire system. Abraham Lincoln's long dead and buried Jury Address comes to life as to equal justice for children too, as well as the equal justice for industrially crippled adults for whom we plead to the nation's highest court. It was typically Lincolnian and to the point, as follows: "I believe this young man I am defending is guilty. I *think* he stole the money. But I am not *SURE*. Are *YOU?*" We Lincoln Aides who have inherited his ideas and ideals as well as his words are to make these hallowed words ring from the rafters of every hall in America until they free her 60,000,000 children from the yoke of cattle, from the animal or *civil* rule for cattle or chattels of "preponderance of evidence" so as to throw upon them, our most precious possession, the cloak of innocence our adults wear, which the bitter cold of guilt cannot penetrate unless "beyond a reasonable doubt and to a moral certainty," unless *"SURE."*

In this manner can Abraham Lincoln become the "GREAT EQUALIZER" as well as the "GREAT EMANCIPATOR," by the work of his aides dedi-

cated to completing the great unfinished task he laid out for us.

To this end he has given his chief aide (by virtue of parenthood of the idea) a Lincolnian beard, just 2½ months old, inspired, as in his case, by a little girl who had just visited the Lincoln Theatre in Disneyland and suggested that if his chief aide in this great task in this uncharted field would grow a beard he would look just like Lincoln. He does, to the extent of an "astounding" resemblance in the opinion of bench and bar at San Jose, "more like him than he did himself," according to a visiting attorney, and "enough like him to be his twin brother," according to another judge of resemblances, and enough like him to gain a 10-minute interview on his movement on the air on KPIX (Channel 5 at San Francisco) and make the local press and portrait studios as San Jose's "Abe," which means that he will have access for his cause of better government, promoted by his non-profit, non-partisan and non-sectarian General Welfare Federation of America, Inc., 150 Congressmen (75 Democrats and 75 Republicans) helped him incorporate at the nation's capital in 1937 and the national magazine, the General Welfare News Advocate he has edited for those 31 years, to TV and newspapers in every town into which he goes to organize a "LINCOLN AIDE CLUB," "CANDLE LIGHTERS CLUB," "TORCH BEARERS CLUB" or "OMBUDSMAN CLUB" (whichever the smeller of the roses prefers) to start, particularly among the eager-for-challenge college students of America, college-

trained women who are getting bored with bridge, men, women and children in all walks of life who want to "do something for their country," a movement for good government, for sound and efficient government, for scientific and economical government with a heart, to combat the hippie movement for anarchy in government, with its free love, free pot, no work and no respect for law and order so as to gutterize the youth of our land in the lusts of the flesh when the spirit of freedom, the spirit of achievement in government, the spirit of equality based on the "one blood God made all nations of men," the spirit of the real democracy Lincoln inspired in us, should prevail in this great nation of ours.

Such is our vision, our long-range planning for America, our vista for the future. Such is our idea, whose "time has come," so is "stronger than all the armies," according to Victor Hugo. How soon we will be able to achieve it, even with our "beard in the door" everywhere, including the legislative halls at Sacramento, will depend a lot on the action of this high court in this class suit on one of our closest to our people acts, which by precedent will make its influence felt in every part of the nation, testing, in one large measure, in one large field of human rights, whether our "nation, or any nation so conceived and so dedicated, can long endure." It cannot if those millions forming the great bulk of our people in the nation's most populous State—the working men and women and their dependents—are to find themselves in the bread lines of poverty when deprived of the

means of livelihood when industrial injury strikes and thrown onto the industrial scrap-heap we Ombudsmen of the Hiram Johnson era thought we had abolished forever in California, all because of two words from our high court in California of "petition denied," which, if reiterated by the higher court of the nation to which we are appealing on bended knee for relief from the intolerable situation that has developed from the emasculation of California's most precious statute which protects those willing to work to help build rather than destroy America, will truly raise havoc in our "Great Society" or "Creative Society" that creates the very poverty we are trying to destroy.

So much for the perspective from which we ask this Honorable Court to view the landmark case we are bringing before it.

THE CASE ITSELF

As to the case itself, we present the following, not as a "cry in the wilderness for justice," as was our similar case on the same issue in this field of nine years ago (*Charles Mannina v. Industrial Accident Commission of California,* No. 578, October Term, 1959), but as a case for EXACT JUSTICE, on EXACT FACTS and EXACT LAW that mandate it.

OPINIONS BELOW

In the Supreme Court of the State of California
in bank

Petition for hearing denied.

Traynor
Chief Justice

Certified as filed May 9, 1968.
William I. Sullivan
Clerk

In the Court of Appeal
State of California
First Appellate District

DIVISION TWO

1 Civil No. 25,257

BY THE COURT

The petition for writ of review is denied.

Filed April 10, 1968
Shoemaker, Presiding Justice.

Before the Workmen's Compensation Appeals Board
State of California
Case No. 62 SJ 8761

Joseph I. Moreali,
Applicant,
vs.
Lowell Foods, Incorporated, and State Compensation Insurance Fund,
Defendants.

ORDER DENYING RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration on file herein and the contents of the Referee's Report with respect thereto. Based on our review of the record, and for the reasons stated by the Referee, whose report we herewith adopt and incorporate,

It Is Ordered that said Petition for Reconsideration be, and it hereby is, Denied.

Workmen's Compensation Appeals Board
Hale Ashcraft

I concur.
A. G. Boardman
Robert J. Calvert
Deputy

Dated and filed at San Francisco, California
Dec. 5, 1967

Case No. 62 SJ 8761

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

Due Date: Nov. 21, 1967

For the history of this matter the Panel is referred to the Opinion on Decision dated October 9, 1967, and to the prior documents noted in Paragraph 2 thereof.

The present petition, in summary, is from a finding that no good cause was shown to reopen, 4 years later, a claim in which it was found certain disability and need for medical and surgical care was not the proximate result of a minor injury to applicant's foot.

As the Referee has earlier stated, he wholeheartedly agrees with the basic premises of applicant's attorney's arguments. Injury may be by "lighting up" of a previously non-disabling condition, and in certain cases applicant's testimony, especially as to feeling pain and its amount, may override any medical opinion. However, as to causation of disability, the Referee disagrees, especially when the question is an esoteric one, solely to be answered by an expert, and not a question of fact finding.

As to the present case, again the weight of the reasonable evidence is contrary to applicant's position. The operating doctor knew for what he operated, and advised the employee *before the operation,* that it was not be reason of his injury. The so-called new evidence (4 years in applicant's possession before he filed his petition to reopen, incidentally, was not suf-

ficient to change either the doctor's opinion nor necessarily, the Referee's.

Nothing further will be said in regard to the Petition itself. Enough was said in the Referee's memorandum following the first Petition in 1962, to which the Board's attention is again drawn.

Recommendation:

It is respectfully recommended the Petition be denied.

Alvin L. Dove, Referee

Filed Nov. 17, 1967

Applicant's attorney requests the file not be reviewed until transcript is available (transcript has been prepared). A. Dove

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SUPPLEMENTAL FINDINGS AND ORDERS

Petition to reopen having been filed and the matter having been regularly heard and submitted before Alvin L. Dove, Referee, said Referee finds and order as follows:

FINDING OF FACT

1. Good cause to reopen has not been shown.

ORDERS

It Is Ordered that applicant's Petition to Reopen, filed herein June 15, 1967, be, and it is hereby denied.

It Is Further Ordered that applicant take nothing further by reason of his claim filed herein.

It Is Further Ordered that the lien claim of the Department of Employment, filed herein June 15, 1967, be, and it is, hereby denied.

It Is Further Ordered that the lien claims of California Blue Shield, filed herein October 3, 1967, be, and they are, hereby denied.

Alvin L. Dove, Referee

Filed Oct. 16, 1967

Alvin L. Dove, Referee
October 9, 1967

Case No. 62 SJ 8761
Injury: June 16, 1962

OPINION ON DECISION

Butcher, born on December 1, 1923, sustained injury to left foot arising out of and in the course of his employment June 16, 1962.

Following hearings, on March 29, 1963 it was found that no time over seven days was lost because of the injury, and that disability following an operation of July 31, 1962 was not the result of this injury. Further medical treatment request was denied. Reference is made to the Findings and Award and Order on March 29, 1963, to the accompanying Report of the Referee on Decision, dated March 25, 1963, to the Report of Referee (summary of testimony) dated February 19, 1963, to the Referee's Report and Recommendation on Petition for Reconsideration of April 30, 1963, and the Panel's Opinion and Order

on Reconsideration filed May 15, 1963. The District Court of Appeal denied hearing September 6, 1963.

As for the present proceeding, under date of June 15, 1967, the last possible date before this Appeals Board's jurisdiction would be lost, applicant filed a Petition to Reopen. In essence, it alleges "newly discovered evidence" in the form of early X-rays, further alleged to prove that the operation of 1962 was for the results of injury, not prior condition as testified to by Dr. Josephson, the surgeon who operated.

There have been two further lengthy hearings, and voluminous documentary evidence has been filed as well. In summary, the Referee is of the opinion applicant has not shown good cause to reopen and his Petition to Reopen must be denied. Reference is again made to Dr. Josephson's testimony as given on September 6, 1967, after being allowed to review the so-called "new evidence."

If for no other reason, the Petition would have to be denied by reason of Laches. Applicant was aware of the early X-rays shortly after his hearing of 1963, yet waited until June 1967 to Petition to Reopen.

It will be found that applicant has not shown good cause to reopen. His Petition to Reopen, filed June 15, 1967, will be ordered denied and it will be further ordered that he take nothing further as a result of his claim herein.

Lien claims must be denied.

Alvin L. Dove, Referee

THE "DECISION" ITSELF —SO FAR DEEMED SACROSANCT AS COMING FROM GOD HIMSELF

"It is felt that this individual should proceed with repairative corrective surgery aimed at helping the defects as described above and it is also felt that these should be carried out at the patient's expense as they are in no way connected with his recent contusion . . .

"We have to call these educated guesses because it took me many years . . .

"As far as I was concerned, I did not even consider the question of trauma lighting up his particular condition . . .

"Trusting that these comments will help in this rather complicated situation whereas the Doctor is dealing with a disabled person and must assume sufficient omnipotence to be able to ascertain the component industrial and nonindustrial factors of this particular disability much against his better judgment and desire, I remain,

Very sincerely yours,
J. B. Josephson, M.D."

JURISDICTION

1. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257, which provides in part:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> (3) By Writ of Certiorari * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution * * *."

2. The following cases holding that the United States Supreme Court may review a decision of a State Supreme Court construing a state statute by which construction it is contended a party to the proceeding is denied a right guaranteed by the Federal Constitution, sustain the jurisdiction of this Court:

Cudahy Co. v. Parramore, 363 U. S. 418, 44 S. Ct. 366, 68 L. Ed. 366;

Dahn Ke-Walker v. Bondurant, 257 U.S. 282, 42 S. Ct. 106, 66 L. Ed. 239;

Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, 42 S. Ct. 101, 66 L. Ed. 227;

St. Louis etc. Railway Co. v. Wynne, 224 U. S. 354, 32 S. Ct. 493, 56 L. Ed. 799.

3. The Supreme Court of the State of California is the highest Court of the State.

4. The judgment of which review is sought is a final judgment of the Supreme Court of the State of California.

5. The judgment herein sought to be reviewed was filed on May 9, 1968.

6. The Federal question of substance which is involved is that the guarantee of equal protection of the law and due process of law, as contained in Amendment XIV, Section 1 of the Federal Constitution, has been denied to your Petitioner and 7,000,000 other California workers (and their 8,000,000 dependents) who may sustain hidden injuries and are deprived of their just rights under these constitutional protections *"SOLELY"* by "ESOTERIC" evidence, as adjudicated here, from referee to highest court, by *"OMNISCIENCE"*, again "SOLELY", as adjudicated here, from the deciding doctor to the "AMENS" of the Referee, the three Board members, the three Appellate Court Justices and the seven Supreme Court Justices, which all the reviewers presumably considered "substantial" evidence sufficient to justify such acquiescence as "due process" and "equal protection of the laws" with those workmen who sustain visible injuries and have their rights determined by "TRIERS OF THE FACTS" rather than "TRIERS OF THE GUESSES", by occultism, by surmise, by conjecture, by hypothesis, or, in other words and synonyms, by just plain unadulterated "guesswork" evidence that has no place in a judicial system based on "EXACT" justice and "EQUAL" justice to *ALL* men, especially when their brothers in the same class or group who sustain injuries visible to the naked eye or x-ray film are given the complete protection of the Workmen's Compensation Law, the Constitution of

California and the Constitution of our Nation, those subject to the "guesswork" or "witchcraft" rule getting no justice at all, as here.

THE QUESTION PRESENTED

Has due process of law and the equal protection of the laws been denied your Petitioner and those of the 7,000,000 California workmen (with their 8,000,000 dependents) who fall into his category of being unfortunate enough to sustain, instead of injuries that are visible or x-rayable, which bring automatic justice to the bereft-of-income family under our special Constitutional Amendments of 1911 and 1918, and the Workmen's Compensation Law implementing them (for the express protection of *ALL* workmen injured in industry and their dependents), hidden or invisible injuries that medical science cannot measure, evaluate or penetrate, which bring no protection whatsoever to the industrially felled family, as here, and which "of, by and for" the people provisions become "as sounding brass, or a tinkling cymbal", in other words, is workmen's compensation just for the one per cent of our working population who have justiciable and adjuster level cases in the visible injury field and to be wiped off the statute books and sacred parchment pages written in blood, sweat and tears of our ancestors as to the other ninety-nine per cent of 15,000,000 people who fall within the class the contents of whose skin God has hidden from view, as in the typical guinea-pig case before us, which if it falls to the

steel hammer of "Writ denied" instead of the uplifting hand of the Goddess of Justice who has compassion for those thrown by the wayside to starve on employer-public thirty pieces of silver they cannot eat because the moneychanger in the temple of God's noblest creation is even allowed to keep them when it deprives the family of the industrial compensation and medical treatment they should have brought, will doom 15,000,000 of his fellow human beings to a future of utter darkness in the nation's Golden State where greed for gold is king and the rights of the "common man" Lincoln said God must have loved since he made so many of him are governed from on high by false gods of "assumed omnipotence" who will, for all time to come, not only write the decisions for the workers of California and their dependents, be they children of one or grandmothers of ninety-one, but make them stick, as here?

CONSTITUTIONAL PROVISIONS INVOLVED

This case presents the question of the rights of those 15,000,000 human souls pleading with their highest court for justice, including the nominal petitioner, under the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment of the Constitution of the United States (Amendment XIV, Section 1):

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in

which they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

PRESENTATION AND ARGUMENT

The facts in this case are simple. A 38-year-old butcher, entitled to the above quoted rights of citizenship by virtue of birth in and continual residence in San Jose, stubbed the big toe of his left foot on June 16, 1962, while working, so as to aggravate or "light up" a 13-year totally quiescent and totally asymptomatic bunion condition so as to "cause immediate swelling and a great deal of pain," according to the carrier's doctor who rendered the decision that such pain and swelling was non-industrial since he, in his self-proclaimed "omnipotence," decreed that it would have come at that *exact moment* had the industrial trauma not occurred, since the big toe was so subluxed that it lay "under the second and third toe" and was ready to disable the worker although it had caused him no trouble whatsoever in the 13 years since it was operated on and seemingly cured for all time to come. Believe it or not, that self-proclaimed "omnipotent" guess received the blessing and "amen" of the referee, three board members and ten justices of our higher courts, even after we brought into the hearing chambers of the administrative agency two

X-rays of the foot proving that 30 days before that doctor operated on the toe, it was in practically normal position and had not deteriorated or subluxed in one iota since a previous X-ray of three years before (taken because of a broken little toe on the same foot) proved this in black and white, as any Justice of this Court can see with his own eyes from the X-ray (Exhibit A) and the medical comparison of the two X-rays (Exhibit B) attached hereto and made a part hereof. Instead of citing the sacrosanct doctor to the Grand Jury for deliberate and wilful perjury to bolster up his unsupported, money-hungry guess that the non-deteriorating toe had deteriorated to the point of non-industrial disablement at the very moment of industrial trauma, and to justify an unnecessary operation to correct an alleged subluxation another doctor had to restore to pre-operative position, the referee, and board and justices, swallowed his specious excuse for his perjury that a big toe, like a big finger, can be "flexed" from its "static" position to a "dynamic" position, which any one of the thirteen reviewers could have discovered is an absolute *impossibility* by removing his shoe and trying to so flex his own toe with no muscles or tendons to thus move it sideways. Thus the X-ray-proved fraud and perjury of the doctor, in the eyes of the State reviewers, so bolstered up his omnipotent self-admitted "guess" that the race between the two-X-ray-disproved deterioration and the industrial trauma ended in a draw, so as to be a shining example for all adjusters, referees, board members and high court justices for all time to

come in the future in determining the rights of 15,000,000 people in this hidden injury field, the official report, in the monthly edition of *California Compensation Cases* (Vol. 33, P.203, No. 4, April, 1968) already heralding it as a "GROUP TEST CASE," *approved by our State's two highest courts,* with this summary in bold type: "EVIDENCE—EXPERT—MEDICAL EVIDENCE IS ESSENTIAL, AND WHERE UNCONTRADICTED IS BINDING, WHERE THE ISSUE OF INDUSTRIAL CAUSATION OF A DISABILITY DEPENDS ON MATTERS WITHIN THE EXCLUSIVE KNOWLEDGE OF EXPERTS TRAINED IN A SCIENTIFIC SUBJECT." (Will this Honorable Court also add its approval to this insane rule that belies judicial notice of the fact that an M.D. does not make a mortal a god so that, *forever after,* not only in California, *but throughout the nation,* the decision-writing in *ALL* these "HIDDEN INJURY" industrial cases (which comprise *ninety-nine per cent* of them, since visible injuries pose no judicial problem) will be left to the men in white robes instead of those in black robes, who will be transformed thereby into mere rubber stamps in "AMEN" adulation at the feet of Deity?)

Forgotten in this new cult of idol worship on the part of the State officials involved, administrative and judicial, that now threatens the entire *nation,* if its highest court approves this made in the heavens but based in Hell justice, is the toppled rule of our revered Chief Justice Waste of the days of Tanenbaum

and his six learned associates on our State's highest court, of 33 years ago, that it didn't make a particle of difference what the "omnipoent" doctor "guessed" in this regard, for the adjudicated fact of industrial trauma 'lighting up' the pre-existing condition, whatever it was, *spoke for itself,* under the basic doctrine of judicial notice, and spoke both LOUD and CLEAR if we are to have "down to earth" justice in this State, and said for all to hear: "All else is *immaterial. Industry takes the workman as it finds him* and *ANY* 'lighting up' is FULLY compensable and subject to employer-public-paid-for medical treatment to cure and relieve of the effects of industrial injury so as to put the worker back to work as a useful member of our economy instead of becoming a leech on our Great or Creative Society so as to intensify poverty instead of relieving it.

But the days of Chief Justice Waste, Arthur Pillsbury (who, as Governor Hiram Johnson's first industrial accident commission head, invented this magic formula that has brought the happiness our Federal Constitution permits the pursuit of and our California Constitution decrees the "obtaining" of, to millions of California families in the last 33 years) and Tanenbaum are over, if this insane decision, which couldn't be worse if made by Satan himself as the new ruler of the universe, is allowed to stand. It challenges credulity and does violence to reason. It makes 15,000,000 people ruled by fanaticism (dictionary definition "possessed by a deity or other supernatural agent," as here, where *"omnipotence"* or *"esoteri-*

cism" admittedly was the *"SOLE"* basis of the "decision," the partisan, fee-hungry doctor to the extent of deliberate perjury and fraud, as decision-writer for the administrative agency, calling it the former and the "amening" referee the latter). It makes them ruled by occultism, by surmise, by supposition, by premise, by hypothesis, by conjecture, by imagination, by fancy, by speculation, by esotericism, by omnipotence, by just plain unadulterated guesswork or witchcraft, none of which is, or should be, legal evidence in any court in the land much less its highest court, or even the State's highest courts, which are bound by the same rules of "substantial" and "due process" evidence as is our nation's highest, none of which is in accord with "due process of law" and all of which, including the doctor's self-proclaimed "omnipotent" guess in this case, blessed by the referee and respondent board as "esoteric" enough to be the *"sole"* basis of their approval of it as the decision of an administrative-judicial body charged with the sacred constitutional duty of guardianship over those very 15,000,000 wards, should be thrown into the ash-cans of society as their defilers, not elevated to a high perch in place of Mr. Chief Justice Waste's doctrine of human dignity that makes a man, or woman, or child, a *"person"* entitled to constitutional protection against such farcical, but tragic to 15,000,000 people, evidence such as that before the Court in this case brought on their behalf by their free but dedicated Ombudsman.

How deep that dedication is in this particular field (which is only one of a dozen important fields in which

he has operated in his 58 years of day and night service to the cause of government "of, by and for the people") must here be outlined so that this High Court may gauge its intensity and evaluate its soundness in the field of governmental inventions that make democracy work "PROPERLY," which gave him the press title over forty years ago of the "EDISON OF GOVERNMENT" in the days when he worshipped at the feet of such great humanitarians as Dr. David Starr Jordan of Stanford, which gave him his Juris Doctor degree in 1918, Hiram Johnson, the "FATHER OF WORKMEN'S COMPENSATION IN CALIFORNIA," whom he introduced in his initial appearance to a student rally at the San Jose High School as a candidate for Governor in 1910 and whose sponsoring letter is on file with the Clerk of this Court to enable him to gain admittance to its august chambers three decades ago in 1938, and Commissioner Pillsbury, whose invention of that era of "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM," he recognized as the greatest invention of the century in the field of good government, sound government, scientific government, economical government, government with a heart, but which invention has now been buried deep in the cesspools of poverty in California so as to add millions of people on our relief rolls in the days to come unless this High Court comes to the rescue of California by a poverty-preventing decision in this group test case governing the rights of most of California's teeming millions tottering on the brink and already shoved over the

precipice by her two highest courts in their decree of abolishment of this doctrine that has governed California for 33 years, inherent in their decision in this case, which definitely "dumped" the life-saving and grief preventing rule in question, fully briefed and asserted from beginning to end of the proceding, and brought us back to the chaos at the bottom of the cliff, so as to make this case not only a landmark one, but a real cliff-hanger, since only this High Court can reach down and grab this 33-year-old brain child of the "GREAT IMPLEMENTOR OF WORKMEN'S COMPENSATION"—Arthur Pillsbury—and pull it back to the safety of the solid rock of judicial decision on which our learned Chief Justice of that day and his six colleagues placed it.

Your Ombudsman is deeply concerned that this is the case, since once this High Court has spoken adversely, the harm can only be undone by another test case of similar hue but of less potency that it will take another thirty-three to a thousand years to find, since there will never be another case in which the decision-maker in the white robe conceded that he is governed in his admitted "GUESS" as to non-compensability by sheer "OMNIPOTENCE", exposed as a fraud by x-ray evidence that revealed the human skeleton under that robe, and the bowing referee and amening board members who adopted it as their own decision state in black and white, for all to read, that it was based *"SOLELY"* on sheer "esotericism". A more PERFECT case of "no substantial evidence", "failure of due process" and "failure of equal pro-

tection" could therefore not be found even in a thousand years, and California's teeming millions defrauded of their constitutional, statutory and court-approved rights will be dead by then, and the government's relief rolls will be bankrupted, with no money to feed the new generations that will have a difficult time to even exist when forced to pay for FULL eats, housing and medical attention out of their pockets or the taxpayers' when their employers and the general public they charge the premium bill to have already paid for the industrial disability on an *insurance* basis, so as to, in reality, *do away with the insurance basis for workmen's compensation,* which is like saying that a worker should expect the taxpayers to provide him a new home when the one he has paid insurance on for 57 years burns down because the fine print in the insurance contract says that the policy becomes invalid if termites had eaten into the house walls or rafters to the extent that it was ready to collapse at the very moment of the fire, so that it is hard to judge which came first the chicken or the egg, necessitating experts to determine the issue by guesswork so as to forfeit 100% of the insurance money if the expert called in says that the house would have collapsed at the very instant of the fire although the family using it as a comfortable and liveable home didn't even know that there were any termites in it, which is the EXACT ANALOGY to the instant case, since the breadwinner didn't even know there was anything wrong with his toe or foot up to the moment of the industrial trauma and yet lost 100% of his

compensation and 100% of his medical treatment because of the fake-God's guess that the race was a draw, that industrial trauma and culmination of 13 years of quiescence coincided.

Lest the justices of this High Court will say as they read this: "Oh, that guy is off his rocker and is exaggerating the situation all out of proportion, that a thing as serious as that couldn't possibly have occurred in progressive California, let me get more specific in my argument and analogy to the fire in the home with termites in its rafters, which our two highest courts have definitely ruled, since the issue was raised herein, and history has so chronicled their ruling in the official report of it, that the pro-rating rule is to govern in the future as to temporary disability, including medical attention and if the deciding judge in white robes rules that the termites won out 100%, so be it, the learned men in black robes cannot change things and can only say "'AMEN" or "WRIT DENIED".

The issue was more finely drawn in a recent California case (*Granado v. Workmen's Compensation Appeals Board,* 258 A.C.A. 131-132, 1/22/68, 1st Appellate Civil No. 24,644, Supreme Court No. S.F. 22,599) in which the Board went completely overboard and abolished, explicitly and specifically, the black-robe Waste-Pillsbury Tanenbaum doctrine, based on all "lighting up" being fully compensable, and substituted the white-robed doctrine that hereafter in California *ALL* temporary disabilities are to be prorated, so as to give Granado but half his compensa-

tion, and medical attention for half his disabled body (which half, the top, bottom or split down the middle half, it didn't say), because the insurance carrier's man in white robe "guessed" at this proportion as due to the previous condition in this "lighting up" case, so as to cut him down from $70.00 per week to $35.00, with State Aid to Needy Disabled, State Aid to Needy Children, and general relief, both in groceries and medical attention, picking up the tab for most of the balance and the man slaving for the next 5 or 10 years to pay any remaining medical bills or back wages needed for his family, so as to keep him in poverty the rest of his life because he had termites in his body he didn't know about, which lays the whole field of "HIDDEN INJURIES" open to decision by the doctor for the carrier, who on viewing the x-rays of the industrially disabled back in a typical case of the future, and present in California, since it is now the governing rule, rubs his hands in glee and says: "Oh, good, he has a little arthritis in his spine which he denies ever bothered him, no more than any man of his age, it is true, but since the x-ray revealed it, I estimate that 50% of his current temporary disability is due to the pre-existing arthritic condition. My carrier will appreciate such a wind-fall guess on my part and will reward me with $100.00 for my report to this effect, plus a $1,000.00 fee for a laminectomy or disc operation or $2,000.00 for a fusion operation if the man needs one. That will buy me a new Cadillac when I trade my last year's model in. The new business I get from the carriers when

they learn of my 50% guesses will get me a new yacht next summer".

The State Appellate Court, believe it or not, approved this abdication of the black robes of Chief Justice Waste to the white robes of the money-greedy "guessers for gain", on the theory that the Chief Justice and his colleagues and every single Justice on all our higher courts for three decades were wrong in construing "disability" subject to pro-rating as meaning "permanent" disability only and that if the Board decided to abandon its function as triers of the facts to the pro-rating guesses of the men in white robes, the men in black robes were too powerless to interfere.

At this, our venerable Supreme Court granted a hearing in that case, which is coming up in September. But it painted itself into a corner in denying a hearing on our *companion case* on the same issue, with but one difference, the deprivation of 100% of the man's compensation and medical attention instead of 50%, for if the Supreme Court of the United States now affirms the decision made in our case the ruling will be chronicled by the official reporter of California Compensation Cases as the established policy of the nation in these "hidden injury" cases, no matter what the State court rules, so as to necessitate another appeal to the nation's highest court to undo the harm done and change the Federal rule. We sincerely trust that this will not become necessary and that both the Supreme Court of our State in the *Granado* case and the Supreme Court of our Nation in this *Moreali* case will speak out concurrently, *as of one voice,*

against the attempted emasculation of the Workmen's Compensation Law of the nation's most populous State, whose teeming millions, if thrown suddenly onto the poverty rolls of the nation would cause a depression of major magnitude, in addition to setting the cause of good government back half a century.

The cause of good government is the primary concern of your (the Supreme Court's) *de facto* Ombudsman in these matters of government, at all levels, to which he has devoted his entire life. Only if we have good government can we have a happy people, and as "Lincoln Aides", "Candle Lighters" (from Father Keller's "It is better to Light one Candle than to Curse the Darkness"), "Torch Bearers", and "Champions of Justice and Scientific and Economical Government with a Heart", it is our "labor of love" duty to see that they are happy, just as it is the compensated duty of the addressees of this appeal to see that those million affected are allowed to "pursue happiness" under "due process" and "equal protection" rules, so that they may *ALL* share in "AMERICA'S DREAM", in the "WORLD'S DREAM," of all men at peace with themselves and with their neighbors, in heart color unity, be their skins black, white, yellow or red.

Your Lincoln Aide Ombudsman began this service to his State and Nation in this very field of workmen's compensation, which explains why it is so close to his heart.

When as a lad of 17, a Junior in high school, he heard from the lips of the man who fathered the sys-

tem in California those words upon which the entire system is based of "HUMAN RIGHTS ABOVE PROPERTY RIGHTS," "HUMANITY OVER DOLLARS AND CENTS", and "workmen's compensation" as the first big task to implement these immortal words, he was at the City Library that very night digging into the magazines for articles on Wisconsin's system to contribute research and debating skill to the great task of obtaining such a system for California. We "Bull Moose" Progressives of that era secured the passage of the first Constitutional Amendment the very next year (1911) and revised and improved it in 1918.

That year your Ombudsman doffed his Juris Doctor cap for a state official hat, which he wore for two decades as Chief Attorney and Chief Deputy for the State Labor Commissioner under 5 Governors, 6 Labor Commissioners and 3 Directors of the State Department of Industrial Relations. This was in the days when the A.F. of L. had no legal department and before the C.I.O. was born and it fell to your Ombudsman to carry on the battle to improve our labor laws all alone, to the extent of over 200 measures enacted at nine sessions of the Legislature, all without a single vote against them, and the commendation of Clyde Seavy, Chairman of the State Railroad Commission and later of the Federal Power Commission, to Hiram Johnson in 1938 as the man who "had done more than any Governor since your time to amend, keep alive and make truly effective the great humanitarian reforms for the protection of those who toil in

California you got through in those days of early struggle to implement them, and give them the 'postal card' justice we Progressives of the 'Bull Moose' days envisaged for those who toil and their dependents."

Fifty-eight years later this same Ombudsman spent four nights at the County Law Library till 3:00 A.M. (by special permission of the Law Librarian because of the importance of the task to 15,000,000 people) to research both the State and Federal fields of law for a foundation for an appeal to the nation's highest court to save this same treasured law from utter destruction at the hands of the "guessers in white robes" that have California's teeming millions on the rocks of despair. This Petition is the result. May his labors bear fruit, not be "love's labor lost".

They bore fruit on another case in this High Court 9 years ago (*Mannina v. I.A.C.*, supra), but in an unexpected manner. His petition was denied because an adequate foundation for Federal intervention had not been laid, but he filed a Petition to Reopen (here his 5-year period has expired and a "Writ denied" will sound the death knell of the hopes of millions), and at the hearing on same forced Dr. O. W. Jones, Jr., of San Francisco, leading neurological expert for the carriers in Northern California for over a quarter of a century, to admit, when placed under oath, that his lead guess of three that Charlie Mannina's severe headaches were "slight" was merely a *"GUESS"*, since he had no apparatus to measure pain and/or disability and no occult power not possessed by any other mortal to discern or evaluate same, adding later, in

a gracious gesture to your Ombudsman who had pursued the matter so relentlessly over the years: "My opinion, or rather my 'guess', as Mr. Johnson expresses it, is . . .". This brought the increase in the award prayed for in vain in our Petition for Writ of Certiorari to this High Court, a self-procured operation that cured the pain and disability completely and put the man back to work for four long months with no pain whatsoever, after which osteomyelitis unfortunately set in, necessitating further operations that left him a hopeless cripple with the highest award of $90,000.00 in any workmen's compensation case in history, but with Ombudsman loving struggles of 5 years, but for which he and his family would have become taxpayer burdens, as will millions of California families unless the Writ herein prayed for on their behalf by your Ombudsmanic Champion of Justice is granted.

In the *Maude E. Collins v. Workmen's Compensation Appeals Board, et al.,* case, W.C.A.B. No. 65, S.J. 15080, Appellate Court No. 23826, First District (hearing denied by Supreme Court) your Ombudsman forced Dr. Porter Forcade of San Francisco, the main orthopedic expert for the carriers in Northern California for the same quarter century period, to the same admission, when placed under oath, that he was merely "GUESSING" in his opinions as to pain and/or disability in these "HIDDEN INJURY" cases, he too adding later in his testimony the same words Dr. Jones used of "My opinion, or rather my guess, as Mr. Johnson expresses it, is . . .", proving

conclusively from the lips of the main experts in both fields that the two words are synonymous when applied to injuries these human beings in white robes have no more power to guess at accurately than the rest of us mortals that are entitled to wear black robes. Dr. Joseph J. Fitzsimmons of San Jose, the carriers' main local expert in the orthopedic field, qualified his answer to the Ombudsmanic question in that same Ombudsmanic Maude Collins case, when placed under oath, with "Yes, but it is an educated guess. . . . True, it is a guess, however", which is the same answer finally wrung from the offending doctor in the instant case, Dr. J. B. Josephson, the dean of orthopedic experts for the carriers in San Jose, after four hours of cross-examination.

In the same *Maude Collins* case that he admitted, when placed under oath, that his "opinions" in these hidden injury cases were mere "GUESSES", so as to conform to the New Century Dictionary of 1933, page 693, definition of the simple good old Abraham Lincoln term of *"guess" (" to form an opinion at random or from evidence admittedly UNCERTAIN"*, and giving on page 784 as a synonym of *"hypothesis"*, "a supposition; an assumption; often, a mere assumption or GUESS"), Dr. Porter Forcade, brought down to San Jose from San Francisco, at an expense to the carrier of some $200.00 or $300.00, to testify as to the degree of disability as caused by *"MINIMAL"* arthritis for a lady of her age, stated "In my opinion it was 80% to 90%", which opinion (guess) from this "BIG GUN" in the industry set the pattern for the lesser

lights who will, in the future, if *Moreali* and/or *Granado* remain the law, by approval from *either* the Supreme Court of our State or of our Nation, ordinarily cut their estimates of the effect of pre-existing arthritis, in temporary disability cases, down to 50% to 60%, since they don't have the colossal nerve of the veteran (and dean of them all) self-admitted "GUESSER FOR HIRE", although they will fear, if they don't make their guesses high enough under this new *sliding scale* of family living money determined by the men in white robes as worshippers of the dollar, rather than by our legislators as servants of the people, that high guessers like the pace-setter aforementioned will take all the business of the carriers away from them and they will have to close their elaborate offices, as one sincere doctor who wouldn't "guess" to suit the carriers did some years ago and the whole industry was held in line for fear of a like fate.

The referees, compromisingly, as a sop to the injured worker and his needy family, will ordinarily scale the estimates of the three high-priced experts (in the *Collins* case they had six) the carriers will ring in on California's laboring population to deprive them of their just and constitutional rights under this new "ETHEREAL GUESSING RULE" as a substitute for the solid Rock of Gibraltar Waste-Pillsbury Tanenbaum "NO PRORATING" rule, and will average it out, as in *Granado,* at 50%, so as to give the industrially injured worker, and his family, $35.00 per week to live on, instead of the $70.00 per week the

Legislature had guaranteed him, to save his loved ones from starvation, in the pre-Moreali and pre-Granado days of justice before pseudo-gods in white robes, as the sacred remedial system's new decision-writers, salted it with "esotericism", "omnipotence", occultism, fool's gold, and just plain witchcraft based on guesses.

To show how this new California system of revelation from on high, by spooks in white robes, as recruiting agents for poverty, will work in actual practice and bring California's teeming millions of hungry mouths to the public troughs of despair, let me take down my hair and brief, as their Ombudsman, our High Court Justices (with two of whose Chief Justices—the late Fred Vinson and retired Earl Warren —I have dined and who called me by my first name, and know are human beings with a compassion for the "EQUAL JUSTICE UNDER LAW" the label on their workshop proclaims to the world), and the rest of the human beings receiving copies of this PETITION (which is going out to 130 of our concerned public officials in California, from the Governor, Speaker, Justices of our Supreme Court, Presiding Justices of our Appellate Court on down to the Board members, Referees at San Jose and concerned attorneys, with type retained for a possible re-run for thousands of law students throughout the nation as an Ombudsmanic text book on good government (Abraham Lincoln "of, by and for the people" government, bolstered up with "Edison of Government" inventions or improvements to perfect its operation and keep it scientific, economical and humane) by lifting the cur-

tain to show the back-stage operation of our government at the enforcement level, in which I have had a half century of Ombudsmanic experience, both public and private, pin-pointing the discussion on the typical situation which arose in the *Charles Mannina* case (supra) of the "THREE GUESSING DOCTORS" I tossed into the lap of this High Court 9 years ago as America's *de facto* Ombudsman.

First of all, when I tackled that case, I made a trip to San Francisco to seek advice from the main legal expert in the field at that time, the late and highly respected Clarence Todd, whose strong voice had rung out on behalf of organized labor for two decades in the State's courts, from the lowest hearing room to the august chambers of our highest court. Asked what he would do to counteract the three carrier-doctor "guesses" that the man's headaches were "slight", he gave the answer I had learned to expect from those of the 30,000 attorneys in California who specialize in workmen's compensation, many of them trained in my office, of: "I'd get six experts to testify that his headaches are severe".

On my way home I made the decision to ignore this advice (which corresponds to the practice of most of the workmen's compensation attorneys in the field), totally and completely, the rationale of my decision, which became a high point in my life of 58 years of Ombudsmanic service in this field, being expressed in the words "Surrender to *guesswork* justice—*NEVER*. *Exact* justice, EQUAL justice, *REAL* justice must prevail. Right makes might, and I'll go to the Supreme

Court of our Nation before I'll accept the *imitation* kind." This I did, in that very case. I am here for the second time, on the very same issue—this time fortified by a proper foundation of PROVED violation of constitutional rights, out of the mouths of the violators themselves, and PROVED *"guesses"* as synonymous with "opinions" in these truly hidden injury cases, out of the mouths of the very top experts in both the neurological and orthopedic fields I was considered a "nut" in and threatened three times in the last quarter century for contempt and/or contumacious conduct in by referees for saying what I have now, at long last, definitely PROVED, namely, "that these men in white robes are just guessing as to pain and/or disability they cannot see and have no *earthly* way of gauging, and *that they know it"*, both factors proved by the power of an oath, on four separate occasions, and the sworn testimony of the very top man in the neurological field in Northern California and the three very top men in the orthopedic field.

I refused in the *Mannina* case to hire a single expert and yet won the highest award in the history of the California Workmen's Compensation Law in it, by forcing the chief of the three "guessers for hire" to admit under oath that he was merely "guessing" and had no more expert knowledge on the degree of pain and/or disability in these true hidden injury cases than the man on the street, since God had concealed this knowledge from him too as a man with feet of clay.

In my earliest case on the subject, *City and County of San Francisco v. Margaret Cecelia Pollard,* I.A.C. No. 87,916, which arose on April 19, 1944, three months after I returned from seven years of service to 150 Congressmen (75 Democrats and 75 Republicans) as their uncompensated Ombudsman at Washington in helping to remedy the two main defects in the Social Security Act of 1936, namely coverage for half our people only, those on payrolls, and no coverage in the way of compensation and medical care for those totally disabled before they reached the retirement age, and opened my private law office in my home town of San Jose and became for 10 years the retained attorney in workmen's compensation matters for each of the 108 unions in the Building Trades Council and Central Labor Council in Santa Clara County, I had *sixteen* of the top experts in all fields, including the very same guessing Dr. O. W. Jones, Jr., referred to above, opposing me, plus a negative myelogram and *sixteen* expert "GUESSES" that this was the "worst case of hysteria ever called to the attention of the Commission", with only Dr. Elwood Olson of San Francisco and a continually collapsing left leg on my side, but won a $9,300.00 award for her and a self-procured operation that removed two large ruptured discs from her back and put her back to work as a registered nurse inside of two months, after two years of disability because 16 guessing doctors guessed that "it was all in her head".

My second Ombudsmanic test case in my quarter century battle against occultic determination of the

rights of those injured while toiling, and their dependents, came in the Appellate Court case of *Evans v. Industrial Accident Commission,* 71 C.A. 2d 244, 249 (1945), which gave the Commission (now Board) the right, for the first time, and made it mandatory on it, to overrule the referee if he went entirely on the doctor's guesses (based on falsified factual data, there as here) and ignored the facts.

My second Ombudsmanic test case in the courts, *Cadotte v. I.A.C.,* 86 C.A. 2d 754 (1948), established the judicial rule for California that in this hidden injury field the FACTS speak *LOUDER* than the GUESSES of experts and if the Commission (now Board) ignored them and decided the case on the basis of the medical guesses "SOLELY", it "would be acting *"IMPROPERLY",* which *"improper"* conduct is now before the highest court in the land for adjudication, since the ADMITTED fact is that it acted, in the instant case, "SOLELY" on this "ESOTERIC" or "OMNIPOTENT" evidence, to the total exclusion of the facts and the report of the attending physician, Dr. A. V. Giampaoli, which was as follows:

> "It was certainly obvious that this man had a bunion or more technically hallux valgus of the left foot. I am positive that it is strictly developmental in nature. However, I have been seeing Mr. Moreali for five and one-half years at relatively frequent intervals and I do not recall that he has ever complained of any discomfort of his left foot. After having bumped the foot he had, and I quote from Dr. Josephson's report, 'Immediate swelling and a great deal of pain. There

> seemed to be an increase of fluid within the joint.' It is obvious from the history alone that the injury aggravated his pre-existing defect and therefore it is hard for me to see how this injury can be anything other than industrial."

This medical evidence of a "down-to-earth" attending physician was not "ESOTERIC" enough or "omnipotent" enough for the Referee, or the Board, so they threw it in the waste-basket and thumbed their noses at Chief Justice Waste and his unanimous court in the *Tanenbaum* case (supra) with the only sane and feasible "lighting up" or "aggravation" rule this mere attending physician tried to restate so brilliantly in his non-legal language, and deliberately defied the three Appellate Court judges (one now on the Supreme Court) who had *pre-judged* their conduct in this regard in going on the *"esoteric", "omnipotent"* or guesswork evidence "SOLELY", as *"IMPROPER".*

In such manner has both this "lighting up" rule, adhered to and respected as the very corner-stone of California Workmen's Compensation justice by *every* higher court justice for 33 years, and the *Cadotte* rule, referred to and adopted by our two higher courts so many times in the last two decades since it was established as to give it landmark decision status, gone down the drain in California, to the utter chaos of government budgets geared to the sound *insurance* system inherent in California's basic act for the protection of those who labor but have now been crucified on a cross of gold, which casts its shadow on all the

human misery relief institutions in the State, which must now pick up the tab for the malfunctioning of the workmen's compensation insurance system, into which the the monkey-wrench of "no insurance coverage" has now been thrown by our State Supreme Court's approval of this wreckage of the noble institution we Ombudsmen reformers who have nursed the system from infancy and have lived to see it destroyed in favor of nineteenth century *full* feeding of families on public relief rolls, against which no insurance can be carried, and on which the 20,000,000 taxpayers of the State (even the savings of children are dug into for taxes) must pay the bill on the basis of the "UN-INSURED" verdict in all cases akin to that before us.

Such, in brief, is America's Ombudsman's personally written "toiling upward in the night" history of the Workmen's Compensation Law in California, from its cradle to its grave as far as concerns ninety-nine per cent of the people—those who receive "HIDDEN INJURIES"—who were its intended beneficiaries by those of us who authored it and nursed it to full fruition, only to live to see its main branch felled by the headhunter's axe.

There is life in the limb, however, and as I read in the paper about the little girl who had her right hand successfully sewed back on and "watch the things I gave my life to broken", I, with Rudyard Kipling, "stoop and build them up with worn-out tools", tools used in the legislative chambers for thirteen sessions in the last half century and in the courts of the land, including its highest, for the last quarter century.

This branch of the tree of government, although its main humanitarian one, along with the Social Security Act nurtured by seven years of tender, sacrificing care during its infancy, as outlined above, and for two and a half decades in the field, trimming its branches in the courts and administrative chambers to make it work "properly", scientifically, economically and humanely, is not the only branch to have received Ombudsmanic attention during the last 58 years since the march of government science and her handmaidens —human compassion and taxpayer relief—in a young lad's mind began.

His first act of legislative concern was to father the California Small Claims Court Act in 1921, born from a common postal card received from a constituent by Assemblyman Albert Rosenshine of San Francisco, which read "I object to paying $10.00 to an attorney to collect a small claim of $25.00. Can you help me?" At that instant was the act bearing the words of the card in its title born, with a $50.00 limit approved by every member of the Judiciary Committees of both Assembly and Senate at the young Ombudsman's just-out-of-college solicitation, to be raised to $100.00, $150.00, $200.00 and then $300.00 at the last session and $500.00 at its next (as the amount volunteered as proper by 50 attorneys interviewed at random in your Ombudsman's home county) and then exported to the entire nation so that the remaining 180,000,000 people too may enjoy its benefits as a product of the "increased devotion to the great unfinished task remaining before us" in making "of, by and for" democracy work properly.

The second act of the young Juris Doctor who has made it his lifetime job to doctor up the weaknesses and ills of government, conceived in 1927 in his Edisonic mind in things governmental, needed the cooperation of another young Juris Doctor from a rival institution whose name is Earl Warren—then a young Deputy District Attorney from Alameda County handling legislative matters at Sacramento for the Peace Officers and District Attorneys and who will go down in history as America's Greatest Chief Justice of her Supreme Court. A simply inquiry to him by the Ombudsmanic inventor of "Why can't we have one crime of theft, Earl, instead of the three screw-ball crimes of the days of Blackstone depending on when the intent to steal took place?", brought the instantaneous response from the only possessor of a real Earl Warren mind in America of "You've got a million dollar idea there, Arthur, and if it spreads to other States, you've got a billion dollar brain child." My inquiry as to why he said that produced this illuminating response: "Right now in Oakland we have three cases on trial trying to determine which came first the chicken or the egg—when did the intent to steal take place—one on trial for the third time after trips to the Appellate Court and Supreme Court. You have to try your fraud on workers case at San Francisco again and waste another expensive week of the court's time. This can all be avoided if the time element becomes immaterial. You have saved a million dollars a year to the people of California by this bril-

liant idea, to say nothing of unclogging court calendars, both civil and criminal, that will follow in the wake of its adoption."

This was 41 years ago and the $41,000,000 saved the taxpayers of California by this governmental invention is but a drop in the bucket to what will be saved her taxpayers in the limitless future and the courtrooms opened for the "day in court" by the people waiting years for it and the "billions" that can be saved, according to the now retired Chief Justice, if the idea spreads to other States, which it has not, except for New York and Florida, so far as I can learn from letters to their Governors and Attorneys General, so that the people of 47 States of our Union are still living in the darkness of the common law days and wasting "billions" that could be used for the relief of the poor if there is anything to Benjamin Franklin's theory that "A penny saved is a penny earned" or "An ounce of prevention is worth a pound of cure".

To the end of saving this "billion dollars" as the contribution of the Lincoln Aide Ombudsmen to the War on Poverty and to the end of unclogging our court calendars all over the nation and bringing the "administration of justice in America into the Twentieth Century" as the man with the Earl Warren mind expresses it in his talks to the law schools, we are taking him at his word and, now that he has retired from public life after a two and a half score years and one of service in it, we are inviting him to head

our non-profit, non-partisan, non-sectarian Lincoln Aide Movement for better government, in which he has served in every branch, executive, legislative and judicial, by becoming President of the OMBUDSMAN UNIVERSITY OF THE WORLD, organized four years ago to implement it, as the only "training school in government", such as has been advocated as needed by Eleanor Roosevelt, Harry Truman, Adlai Stevenson, Dwight Eisenhower and Earl Warren, that exists in America, and to chair the mass meeting at the Civic Auditorium in San Jose that is to mark the opening, as the New Year dawns on January 2nd, of the greatest campaign or crusade ever undertaken in America to enlist the aid of the young people of the nation and all others who want to show "increased devotion to the great unfinished task remaining before us" of making democracy work *PROPERLY*, so that government "of, by and for the people shall not perish from the earth."

With the growing move to reduce the voting age to eighteen there must be some sort of an institution to fill the void or vacuum that will arise of lack of training or learning in things governmental, so that it may be that Victor Hugo will yet be proved right as to the efficacy of an idea whose "time has come", so as to fully vindicate America's "EDISON OF GOVERNMENT" for inventing, four years ago, on July 4, 1964, the "OMBUDSMAN UNIVERSITY OF THE WORLD" as the vehicle to spread, via air and sound wave, printed page and air-lifted personal ap-

pearance, such knowledge to the youth of America and others with ideas youthful enough to accept the Johnson to Warren—inventor to implementor—"INSTANT ADOPTION" method of legislation utilized in the immediate enactment (within 30 days) of California's "UNIFIED THEFT LAW" (banning common law darkness), as against the "THIRTY YEAR PLAN" of professorial talk in vogue today.

That Earl Warren "INSTANT ADOPTION" method of implementing century-needed reforms (as in the simplified THEFT field) may yet be utilized to remedy the age-old bail evil by your Edison of Government's simple invention of paying the 10% to the county instead of to the bail bond broker, so as to become a prepaid fine if guilt is established or return to the party if found innocent. This simple remedy for the bail ills of the nation that jail 100,000 Americans *PER DAY* (an average of 33 in each of the nation's 3072 counties) while their innocence is being proved, could be adopted overnight if our venerable retired Chief Justice, whose interest in bail reform dates back to his prosecuting days of half century ago, will but accept our plea that he head our movement, initiated 31 years ago by 150 dedicated nonpartisan Congressmen, to implement the "promote the general welfare" clause of the Constitution by remedial legislation based on science, economy, and humaneness, by becoming President of the GENERAL WELFARE FEDERATION OF AMERICA, INC., which office is hereby tendered him by your Ombuds-

man, who has been seeking such an honored head for it for three decades. If he also accepts the tendered office of President of the OMBUDSMAN UNIVERSITY OF THE WORLD, as your Ombudsman's greatest invention in the field of government, where he has been known by the press for over four decades as "GOVERNMENT'S EFFICIENCY AND HEART EXPERT", that institution, the birth of which has not yet been announced by the press because considered too illusionary to be real, will soon become the greatest institution for the training of youth in things governmental that this world has ever seen, and Earl Warren will, in retirement, continue to serve his nation in the unbridled field of humanitarian service in the same efficient manner as he did for half a century in the harness of government. Let us pray that his age, which is only two years greater than your Ombudsman's, will not bar him from this great additional service to mankind urged upon all of us by the immortal Lincoln.

The contribution of the Justices of the Supreme Court of our Nation to this great unfinished task of making mankind kind can be to see to it that the most basic act for the protection of the teeming millions who toil in California, and their dependents, does not die from the near fatal blow that has been dealt it and that it will be revived to live another year, another century, another eon, or until the fifth of Never, to protect those men, and women, and children, with more than an empty slogan of "EQUAL JUSTICE

UNDER LAW", so that the landmark decision we expect from this revered High Court will live forever in the hearts of men everywhere.

Respectfully submitted,

ARTHUR L. JOHNSON,

Attorney for Petitioner, and, as amicus curiae, America's Unofficial and Uncompensated Ombudsman, Lincoln's Chief Aide, Candle Lighter, Torch Bearer and Champion of Justice and Scientific and Economical Government With a Heart, and in these capacities, representing the 7,000,000 California workmen employed in industry, and their 8,000,000 dependents, who are sorely aggrieved and damaged, as the largest group in the State of California, by the decision herein complained of.

(Exhibits Follow)

Exhibit A

Exhibit B

Thomas N. Foster, M.D.
William H. Graham, M.D.
N. K. Darling, M.D.
D. Brendan O'Donnell, M.D.

Radiologists
Physicians and Surgeons Building
630 East Santa Clara Street
San Jose 12, California

March 9, 1964

TO: A. V. Giampaoli, M. D.

RE: *Mr. Joseph I. MOREALI. Comparison Report.*

Comparison of your examination of the left foot of Mr. Joe Moreali dated 5/11/59 with our examination at O'Connor Hospital dated 6/30/62 reveals similar angular relationships in the two examinations. In each instance the proximal phalanx of the first toe is angulated approximately 30 degrees laterally in relation to the shaft of the first metatarsal, and the shaft of the distal phalanx is angulated laterally approximately 17 degrees in relation to the proximal phalanx.

In each examination the first metatarsal head is separated from the second metatarsal head by a distance of approximately 1.0 cm.

Very minor variations in these measurements exist between the two examinations, not beyond the range of which might occur during positioning.

Thomas N. Foster, M.D.